

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-18/50498

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 13, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to the spousal impoverishment provisions of the medical assistance program, a hearing was held on October 1, 2001, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner's wife is entitled to receive a portion of the petitioner's income under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Judy Dowd, ESS  
Eau Claire County Dept Of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Eau Claire County.
2. The petitioner's wife lives in the community.
3. The petitioner's wife seeks to have her spousal allowance increased beyond the basic amount allowed by the spousal impoverishment provisions of the medical assistance program.
4. The petitioner's wife previously requested that her income allocation be increased beyond the basic limit in January 2001. A decision issued late that spring determined that she had not demonstrated that she required more than the basic allowance. *See*, DHA Decision No. MRA-18/47747.

5. The petitioner's wife has not submitted a budget with her current request. She did testify that she is paying \$100 a month for damage her husband caused to an apartment, that she requires a new hearing aid that will cost \$995 and that her roof requires repairs that will cost \$1,520.
6. The petitioner receives \$1,765.18 in income each month.
7. The petitioner's spouse receives a total of \$733.92 in income each month.
8. The petitioner's spouse incurs the following expenses each month in addition to the amounts needed to pay for the expenses listed in paragraph 5:
  - a. mortgage \$ 503.28 (includes insurance and taxes)
  - b. Charter Cable \$ 11.03
  - c. groceries \$ 200
  - d. clothes \$ 75
  - e. entertainment \$ 40
  - f. meals at nursing home \$ 30 (for wife when visiting husband)
  - g. trash pickup \$ 10.35
  - h. gas \$ 70
  - i. car insurance \$ 43.50
  - j. car maintenance \$ 75
  - k. life insurance \$ 31.13
  - l. snow & lawn \$ 30
  - m. health insurance \$ 105
  - n. health ins. & med. \$ 53
  - o. misc. household exp. \$ 25
  - p. window wash \$ 10
  - q. furnace checkup \$ 14
  - r. utility \$ 266.75
  - s. telephone \$ 50
  - t. personal hygiene \$ 50

### DISCUSSION

Both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1,935 plus an excess shelter allowance, which is any shelter cost over \$580.50. *MA Handbook*, Appendix, §23.6.0. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to *exceptional circumstances resulting in financial duress*, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the

Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.*, MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

This is the second time this year that the petitioner's wife has requested an increase in her income allocation. The first matter was postponed once because she had not prepared a budget or documented any of her claims. When the matter was heard, her documentation and budget were inadequate so the decision was made on the evidence available. Her new hearing request contends that the amount granted to her at the previous hearing was inadequate, but again there is no budget and almost no documentation. She did testify that she needs a new hearing aid that costs \$995 and repairs to her roof that costs \$1,520. In addition, she is paying \$100 a month for damage caused to an apartment by her husband before he went into the nursing home. I will assume that she can pay for the hearing aid and roof in a year, or 12 equal payments. Those two items total \$2,515, and when divided by 12 increase her monthly budget by \$209.58 over that determined in the original decision. The \$100 she pays for the apartment damage brings the increase to \$309.58. Because she submitted no new budget in this matter and made no new arguments, I will assume that the expenses determined in the original decision are correct. *See*, DHA Decision No. MRA-18/47747 and Finding of Fact No. 8 of this decision.

The county agency determined that the petitioner's spouse is entitled to a maximum spousal allowance of \$2,076.66, so she must demonstrate that her basic needs exceed this amount. In the earlier decision I found that her basic expenses were \$1,713.04. When the \$309.58 in additional expenses are added to this amount, it equals \$2,022.62, which is less than the county has already determined that she is entitled to. I understand that the petitioner believes that she requires more than this to live on, but she has failed to submit evidence to prove her need. I also understand that she may no longer be capable of gathering and submitting the evidence required to prove her need. Therefore, I strongly suggest that if she requests any further hearings that she obtain help from a county worker, relative or an advocacy group for the elderly so that she can present proper evidence.

### **CONCLUSIONS OF LAW**

The petitioner has not demonstrated that her necessary and basic needs exceed the \$2,766.66 allowance set by the county agency.

**NOW, THEREFORE, it is** **ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 8<sup>th</sup> day of  
October, 2001.

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/S Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
118/MDO

cc: Mike Serum - Eau Claire Co.  
Susan Wood